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**SENATE BILL 1022**

**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

**INTRODUCED BY**

**Timothy Z. Jennings**

**AN ACT**

**RELATING TO CHILD ABUSE; ESTABLISHING DRUG ADDICTION AND FETAL ALCOHOL SYNDROME AS CHILD ABUSE; PROVIDING FOR REQUIREMENTS PRIOR TO RELEASING CERTAIN CHILDREN FROM STATE CUSTODY; AMENDING SECTIONS OF THE NMSA 1978.**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:**

**Section 1. Section 30-6-1 NMSA 1978 (being Laws 1973, Chapter 360, Section 10, as amended by Laws 2004, Chapter 10, Section 1 and by Laws 2004, Chapter 11, Section 1) is amended to read:**

**"30-6-1. ABANDONMENT OR ABUSE OF A CHILD. --**

**A. As used in this section:**

**(1) "child" means a person who is less than eighteen years of age;**

**(2) "neglect" means that a child is without**

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1 proper parental care and control of subsistence, education,  
2 medical or other care or control necessary for his well-being  
3 because of the faults or habits of his parents, guardian or  
4 custodian or their neglect or refusal, when able to do so, to  
5 provide them; and

6 (3) "negligently" refers to criminal  
7 negligence and means that a person knew or should have known of  
8 the danger involved and acted with a reckless disregard for the  
9 safety or health of the child.

10 B. Abandonment of a child consists of the parent,  
11 guardian or custodian of a child intentionally leaving or  
12 abandoning the child under circumstances whereby the child may  
13 or does suffer neglect. Whoever commits abandonment of a child  
14 is guilty of a misdemeanor, unless the abandonment results in  
15 the child's death or great bodily harm, in which case he is  
16 guilty of a second degree felony.

17 C. A parent, guardian or custodian who leaves an  
18 infant less than ninety days old in compliance with the Safe  
19 Haven for Infants Act shall not be prosecuted for abandonment  
20 of a child.

21 D. Abuse of a child consists of a person knowingly,  
22 intentionally or negligently, and without justifiable cause,  
23 causing or permitting a child to be:

24 (1) placed in a situation that may endanger  
25 the child's life or health, including drug addiction or fetal

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1 alcohol syndrome;

2 (2) tortured, cruelly confined or cruelly  
3 punished; or

4 (3) exposed to the inclemency of the weather.

5 E. Whoever commits abuse of a child that does not  
6 result in the child's death or great bodily harm is, for a  
7 first offense, guilty of a third degree felony and for second  
8 and subsequent offenses is guilty of a second degree felony.  
9 If the abuse results in great bodily harm or death to the  
10 child, he is guilty of a first degree felony.

11 F. Evidence that demonstrates that a child has been  
12 knowingly, intentionally or negligently allowed to enter or  
13 remain in a motor vehicle, building or any other premises that  
14 contains chemicals and equipment used or intended for use in  
15 the manufacture of a controlled substance shall be deemed prima  
16 facie evidence of abuse of the child.

17 G. A person who leaves an infant less than ninety  
18 days old at a hospital may be prosecuted for abuse of the  
19 infant for actions of the person occurring before the infant  
20 was left at the hospital."

21 Section 2. Section 32A-4-2 NMSA 1978 (being Laws 1993,  
22 Chapter 77, Section 96, as amended) is amended to read:

23 "32A-4-2. DEFINITIONS.--As used in the Abuse and Neglect  
24 Act:

25 A. "abandonment" includes instances when the

1 parent, without justifiable cause:

2 (1) left the child without provision for the  
3 child's identification for a period of fourteen days; or

4 (2) left the child with others, including the  
5 other parent or an agency, without provision for support and  
6 without communication for a period of:

7 (a) three months if the child was under  
8 six years of age at the commencement of the three-month period;  
9 or

10 (b) six months if the child was over six  
11 years of age at the commencement of the six-month period;

12 B. "abused child" means a child:

13 (1) who has suffered or who is at risk of  
14 suffering serious harm because of the action or inaction of the  
15 child's parent, guardian or custodian;

16 (2) who has suffered physical abuse, emotional  
17 abuse or psychological abuse inflicted or caused by the child's  
18 parent, guardian or custodian;

19 (3) who has suffered sexual abuse or sexual  
20 exploitation inflicted by the child's parent, guardian or  
21 custodian;

22 (4) whose parent, guardian or custodian has  
23 knowingly, intentionally or negligently placed the child in a  
24 situation that may endanger the child's life or health; or

25 (5) whose parent, guardian or custodian has

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1 knowingly or intentionally tortured, cruelly confined or  
2 cruelly punished the child;

3 C. "aggravated circumstances" include those  
4 circumstances in which the parent, guardian or custodian has:

5 (1) attempted, conspired to cause or caused  
6 great bodily harm to the child or great bodily harm or death to  
7 the child's sibling;

8 (2) attempted, conspired to cause or caused  
9 great bodily harm or death to another parent, guardian or  
10 custodian of the child;

11 (3) attempted, conspired to subject or has  
12 subjected the child to torture, chronic abuse or sexual abuse;  
13 or

14 (4) had his parental rights over a sibling of  
15 the child terminated involuntarily;

16 D. "great bodily harm" means an injury to a person  
17 that creates a high probability of death, that causes serious  
18 disfigurement or that results in permanent or protracted loss  
19 or impairment of the function of [~~any~~] a member or organ of the  
20 body;

21 E. "neglected child" means a child:

22 (1) who has been abandoned by the child's  
23 parent, guardian or custodian;

24 (2) who is without proper parental care and  
25 control or subsistence, education, medical or other care or

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1 control necessary for the child's well-being because of the  
2 faults or habits of the child's parent, guardian or custodian  
3 or the failure or refusal of the parent, guardian or custodian,  
4 when able to do so, to provide them;

5 (3) who has been physically or sexually  
6 abused, when the child's parent, guardian or custodian knew or  
7 should have known of the abuse and failed to take reasonable  
8 steps to protect the child from further harm;

9 (4) whose parent, guardian or custodian is  
10 unable to discharge his responsibilities to and for the child  
11 because of incarceration, hospitalization or physical or mental  
12 disorder or incapacity; or

13 (5) who has been placed for care or adoption  
14 in violation of the law; provided that nothing in the  
15 Children's Code shall be construed to imply that a child who is  
16 being provided with treatment by spiritual means alone through  
17 prayer, in accordance with the tenets and practices of a  
18 recognized church or religious denomination, by a duly  
19 accredited practitioner thereof is for that reason alone a  
20 neglected child within the meaning of the Children's Code; and  
21 further provided that no child shall be denied the protection  
22 afforded to all children under the Children's Code;

23 F. "physical abuse" includes ~~[but is not limited~~  
24 ~~to]~~ any case in which the child exhibits evidence of skin  
25 bruising, bleeding, malnutrition, drug addiction, fetal alcohol

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1 syndrome, failure to thrive, burns, fracture of any bone,  
2 subdural hematoma, soft tissue swelling or death and:

3 (1) there is not a justifiable explanation for  
4 the condition or death;

5 (2) the explanation given for the condition is  
6 at variance with the degree or nature of the condition;

7 (3) the explanation given for the death is at  
8 variance with the nature of the death; or

9 (4) circumstances indicate that the condition  
10 or death may not be the product of an accidental occurrence;

11 G. "sexual abuse" includes [~~but is not limited to~~]  
12 criminal sexual contact, incest or criminal sexual penetration,  
13 as those acts are defined by state law; and

14 H. "sexual exploitation" includes [~~but is not~~  
15 ~~limited to~~]:

16 (1) allowing, permitting or encouraging a  
17 child to engage in prostitution;

18 (2) allowing, permitting, encouraging or  
19 engaging a child in obscene or pornographic photographing; or

20 (3) filming or depicting a child for obscene  
21 or pornographic commercial purposes, as those acts are defined  
22 by state law. "

23 Section 3. Section 32A-4-3 NMSA 1978 (being Laws 1993,  
24 Chapter 77, Section 97, as amended) is amended to read:

25 "32A-4-3. DUTY TO REPORT CHILD ABUSE AND CHILD

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1 NEGLECT-- RESPONSIBILITY TO INVESTIGATE CHILD ABUSE OR

2 NEGLECT-- PENALTY. --

3 A. Every person, including a licensed physician; a  
4 resident or an intern examining, attending or treating a child;  
5 a law enforcement officer; a judge presiding during a  
6 proceeding; a registered nurse; a visiting nurse; a  
7 schoolteacher; a school official; a social worker acting in an  
8 official capacity; or a member of the clergy who has  
9 information that is not privileged as a matter of law, who  
10 knows or has a reasonable suspicion that a child is an abused  
11 or a neglected child shall report the matter immediately to:

12 (1) a local law enforcement agency;

13 (2) the department's child abuse emergency  
14 hotline or department office in the county where the child  
15 resides; or

16 (3) a tribal law enforcement or social  
17 services agency for any Indian child residing in Indian  
18 country.

19 B. A law enforcement agency receiving the report  
20 shall immediately transmit the facts of the report and the  
21 name, address and phone number of the reporter by telephone to  
22 the department office in the county where the child resides and  
23 shall transmit the same information in writing within forty-  
24 eight hours. A department office receiving a report shall  
25 immediately transmit the facts of the report and the name,

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1 address and phone number of the reporter by telephone to a  
2 local law enforcement agency and shall transmit the same  
3 information in writing within forty-eight hours. The written  
4 report shall contain the names and addresses of the child and  
5 the child's parents, guardian or custodian, the child's age,  
6 the nature and extent of the child's injuries, including any  
7 evidence of previous injuries, and other information that the  
8 maker of the report believes might be helpful in establishing  
9 the cause of the injuries and the identity of the person  
10 responsible for the injuries. The written report shall be  
11 submitted upon a standardized form agreed to by the law  
12 enforcement agency and the department.

13 C. The recipient of a report under Subsection A of  
14 this section shall take immediate steps to ensure prompt  
15 investigation of the report. The investigation shall ensure  
16 that immediate steps are taken to protect the health or welfare  
17 of the alleged abused or neglected child, as well as that of  
18 any other child under the same care who may be in danger of  
19 abuse or neglect. A local law enforcement agency is  
20 responsible for investigating reports of alleged child abuse or  
21 neglect at schools, daycare facilities or child care  
22 facilities.

23 D. If the child alleged to be abused or neglected  
24 is in the care or control of or in a facility administratively  
25 connected to the department, the report shall be investigated

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1 by local law enforcement. The investigation shall ensure that  
2 immediate steps are taken to protect the health or welfare of  
3 the alleged abused or neglected child, as well as that of any  
4 other child under the same care who may be in danger of abuse  
5 or neglect.

6 E. A law enforcement agency or the department  
7 shall have access to any of the records pertaining to a child  
8 abuse or neglect case maintained by any of the persons  
9 enumerated in Subsection A of this section, except as otherwise  
10 provided in the Abuse and Neglect Act.

11 F. A person who violates the provisions of  
12 Subsection A of this section is guilty of a misdemeanor and  
13 shall be sentenced pursuant to the provisions of Section  
14 31-19-1 NMSA 1978. "

15 Section 4. Section 32A-4-7 NMSA 1978 (being Laws 1993,  
16 Chapter 77, Section 101, as amended) is amended to read:

17 "32A-4-7. RELEASE OR DELIVERY FROM CUSTODY. --

18 A. A person taking a child into custody shall, with  
19 all reasonable speed:

20 (1) release the child to the child's parent,  
21 guardian or custodian and issue verbal counsel or warning as  
22 may be appropriate; [or]

23 (2) deliver the child to the department or to  
24 an appropriate shelter-care facility or, in the case of a child  
25 who is believed to be suffering from a serious physical or

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1 mental condition or illness that requires prompt treatment or  
2 diagnosis, deliver the child to a medical facility. If a law  
3 enforcement officer delivers a child to a shelter-care facility  
4 or a medical facility, the officer shall immediately notify the  
5 department that the child has been placed in the department's  
6 custody; or

7 (3) if the child is in custody due to alleged  
8 or proven child abuse involving drug addiction or fetal alcohol  
9 syndrome pursuant to Subsection D of Section 30-6-1 NMSA 1978,  
10 the child may be returned to the mother no less than three  
11 years from the date of the child's birth and upon certification  
12 by medical authorities that the mother has remained free from  
13 alcohol, illegal drugs or abuse of prescription drugs for the  
14 entire period.

15 B. When an alleged neglected or abused child is  
16 delivered to the department, a department caseworker shall  
17 review the need for placing the child in custody and shall  
18 release the child from custody unless custody is appropriate or  
19 has been ordered by the court. When a child is delivered to an  
20 appropriate shelter-care facility or medical facility, a  
21 department caseworker shall review the need for retention of  
22 custody within a reasonable time after delivery of the child to  
23 the facility and shall release the child from custody unless  
24 custody is appropriate or has been ordered by the court.

25 C. If a child is placed in the custody of the

1 department and is not released to the child's parent, guardian  
2 or custodian, the department shall give written notice thereof  
3 as soon as possible, and in no case later than twenty-four  
4 hours, to the child's parent, guardian or custodian together  
5 with a statement of the reason for taking the child into  
6 custody.

7 D. Reasonable efforts shall be made to prevent or  
8 eliminate the need for removing the child from the child's  
9 home, with the paramount concern being the child's health and  
10 safety. In all cases when a child is taken into custody, the  
11 child shall be released to the child's parent, guardian or  
12 custodian, unless the department files a petition within two  
13 days from the date that the child was taken into custody. "

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